

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

Donald Emery, et al.,)	
)	
Plaintiffs,)	
)	
vs.)	Civil Action No. 4:08-3351
)	
City of Myrtle Beach,)	
)	
Defendant.)	
_____)	

This matter is now before the undersigned upon defendant's motion to dismiss, made pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. (Doc. # 22).

Plaintiffs filed this action on October 2, 2008. Simultaneously, plaintiffs filed a motion for a temporary restraining order and preliminary injunction. The Court denied this motion by Order dated March 4, 2009. Thereafter, on March 12, 2009 defendants filed a motion to compel or dismiss in which they requested that "the Court issue an Order requiring plaintiff[s] to file a report, answer interrogatories and produce all documents requested or, in the alternative, [dismiss] the lawsuit for failure to prosecute." (Doc. # 12). Plaintiffs filed no response to this motion. By Order dated November 20, 2009, Magistrate Judge Thomas E. Rogers, III., granted in part defendant's motion to compel or dismiss and Ordered that:

Plaintiff has ten days from the date of this Order to serve responses to Defendant's discovery requests. Failure to comply with this order may result in dismissal of this action pursuant to Rules 37 and 41 of the Federal Rules of Civil Procedure.

To date, nothing has been filed.

On July 31, 2009, defendants filed a motion to dismiss pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. In their motion, the defendants assert that:

Plaintiffs have failed to file a Rule 26 (f) Report FRCP and Local Rule 26.03 DSC Report. In addition, Defendant has moved the court for an order compelling all Plaintiffs to serve Answers to Interrogatories and Responses to Requests to Produce, pursuant to Rules 33 & 34 of the Federal Rules of Civil Procedure. Plaintiffs have not responded to Defendant's motion and they have not filed any answered any of Defendant's written discovery requests.

Defendants also note that:

Plaintiffs have not done anything except file a Summons, Complaint, Motion for a Temporary Injunction and supporting Memorandum. Plaintiffs have not responded to Defendant's request for discovery nor has their attorney responded to Defendant's efforts to communicate regarding Court required reports. See Defendant's Motion to Compel or Dismiss filed March 12, 2009. Plaintiffs have failed to prosecute the case or to comply with the Courts local rules or the Court's scheduling order. Under such facts the Defendant is entitled to move for dismissal of the action. Rule 41 (b) FRCP.

The plaintiffs, who are represented by legal counsel, have not filed any opposition to the defendant's motion to dismiss for failure to prosecute. Additionally, as noted in defendant's motion as well as in the Magistrate Judge's November 20, 2009 Order, plaintiffs have filed nothing in this case since October 2, 2008, the date the complaint was filed. Accordingly, for the reasons outlined by defendant in its motion to dismiss and supporting memorandum, and without any opposition by plaintiffs, defendant's motion to dismiss for failure to prosecute is hereby **GRANTED** (Doc. # 22) and this case is **DISMISSED**.

IT IS SO ORDERED.

s/ Terry L. Wooten
TERRY L. WOOTEN
UNITED STATES DISTRICT JUDGE

January 12, 2010
Florence, South Carolina